

COURT OF APPEAL OF AMSTERDAM
SEVENTH MULTIPLE-JUDGE CIVIL-LAW DIVISION

RULING

in the case of:

1. RANDSTAD HOLDING N.V., a public limited liability company with its registered office in Amsterdam, the Netherlands,
lawyers: mr. P.D. Olden and mr. W.P. Wijers of Amsterdam,
 2. VERENIGING VAN EFFECTENBEZITTERS, an association with full legal capacity, with its registered office in The Hague, the Netherlands,
lawyer: mr. P.W.J. Coenen of The Hague and
 3. STICHTING UITVOERING VEDIOR SCHIKKING, a foundation with its registered office in Amsterdam,
lawyers: mr. P.D. Olden and mr. W.P. Wijers of Amsterdam,
- PETITIONERS.

1. Course of the proceedings

The Petitioners are jointly referred to below as the 'Petitioners' and individually as 'Randstad', 'VEB' and the 'Foundation'.

By petition dated 6 October 2008, the Petitioners requested a declaration of binding force of an agreement concluded by them within the meaning of Article 7:907 of the Dutch Civil Code. On 23 January 2009, a pre-trial review was held in response to

the petition to discuss the procedural treatment of the petition and various related issues with the Petitioners. An official record was drawn up of the hearing and is included in the procedural documents.

By letter dated 12 May 2009, the Petitioners provided the Court of Appeal with a written supplement to the agreement in respect of which they request the declaration of binding force. Along with that letter, they submitted a report and schedules describing the ways in which those stakeholders were given notice to attend the hearing of the petition. The report also supplemented and clarified the petition on a number of points identified by the Court of Appeal at the pre-trial review.

The hearing of the petition took place on 20 May 2009. On that occasion, the Petitioners submitted a document in the proceedings that consisted of various additional records which they had brought to the Court of Appeal's attention in advance.

At the hearing, the Petitioners elaborated on the petition and the agreement to which it refers; the aforementioned *mr.* Coenen did so on the basis of a statement of oral pleadings and all the other lawyers named above did so by answering questions from the Court of Appeal. An official record was also drawn up of that hearing and is included in the procedural documents.

No statements of defence were submitted. Likewise, no defence was put forward at the hearing of the petition.

In conclusion, the ruling was scheduled for today.

2. Facts

- 2.1 By notarial deed dated 30 June 2008, Randstad acquired the assets of Vedior N.V., referred to below as 'Vedior', by operation of law, by means of a statutory merger between the two companies within the meaning of Article 2:309 of the [Dutch] Civil Code. As a result of the merger's entry into force, Vedior ceased to exist, and its shareholders became shareholders of Randstad. As the acquiring legal entity, Randstad continued to exist and assumed Vedior's rights and obligations. Before the merger, the shares of both Vedior and Randstad were listed on the stock exchange operated by Euronext N.V. in Amsterdam, referred to below as the 'Stock Exchange'.
- 2.2 On 30 November 2007 at around 10.45 a.m., various media reported a possible takeover transaction involving Vedior. On that day, shares were traded on the Stock Exchange including those of Vedior. At 11.34 a.m., the trade in those shares temporarily ceased at the request of AFM, the Netherlands Authority for the Financial Markets. At 12.16 p.m., still on 30 November 2007, Vedior issued a press release announcing that it was engaged in exploratory discussions with Randstad on a merger of the two companies, possibly by means of a public bid to be issued by Randstad on the Vedior shares. Subsequently, at 1.20 p.m., the trade in Vedior shares was resumed on the Stock Exchange
- 2.3 At the start of the trading session on 30 November 2007 at 9 a.m., the price of Vedior shares was € 12.36. At 10.45 a.m., the price was € 13.63. Just before the temporary cessation of the trade in Vedior shares at 11.34 a.m., the price had risen to € 15.25. On resumption of the trade in those shares at 1.20 p.m., the re-opening price was € 15.80. Between 9.00 a.m. and 11.34 a.m., well over 3,000 purchase agreements were concluded in respect of Vedior shares. This involved the total sale of approximately 3,010,000 Vedior shares. The agreements were performed, the sellers transferred the shares

concerned, and the buyers paid the agreed prices. Those prices were equal to the price of the Vedior share at the time of conclusion of the purchase agreement in question.

2.4 By letter to Vedior dated 11 December 2007, VEB essentially took the position that Vedior had breached its obligations under Article 5:59 (1) in conjunction with Article 5:53 of the (Dutch) Financial Supervision Act ('Wft') in respect of the disclosure of its exploratory discussions with Randstand on a merger of the two companies. VEB argued that Vedior disclosed the fact that those discussions were held too late, thereby acting unlawfully towards those holders of Vedior shares who sold their shares on 30 November 2007 between 9 a.m. and 11:34 a.m. and that Vedior was therefore obliged to compensate those shareholders for the damage that they have incurred as a consequence. That damage consists of the difference between the price at which the shareholders in question sold the Vedior shares in the aforementioned time period and the price at which they could have sold those shares if Vedior had disclosed the aforementioned discussions on time. In the latter case, the price of the Vedior shares would have reflected the information in question earlier and have led to a higher share value and a higher price.

2.5 In its aforementioned letter, VEB invited Vedior to discuss the compensation of the damage incurred by the shareholders in question. Those discussions have led to an amicable settlement, recorded by written agreement dated 26 September 2008, to which all of the Petitioners are party. This agreement is entitled Collective Settlement Agreement. It was supplemented by the Petitioners on 2 February 2009 with a schedule entitled Addendum to Collective Settlement Agreement and consisted of a more detailed description of the events that led to the damage referred to above. The agreement provides that Randstad (as legal successor of Vedior) will create a

fund of up to € 4,250,000 from which the injured shareholders will be compensated. It also provides for an apportionment key to determine the amounts for which the individual injured shareholder will be eligible (from the fund).

2.6 The apportionment key is linked to the difference between the prices at which Vedior shares were sold on 30 November 2007 between 9 a.m. and 11:34 a.m. and the re-opening price of € 15.80 on resumption of the trade in Vedior shares at 1.20 p.m. Essentially, shareholders who sold Vedior shares on the Stock Exchange on 30 November 2007 before the temporary cessation of the trade are eligible to 80% of the difference between the price at which they sold their shares and € 15.80 in the manner described in more detail in Article 3 of the aforementioned agreement. The amount of the fund created pursuant to the agreement has been determined so that it can be expected to cover the total amount of compensation calculated in this way. The average compensation per Vedior shares sold between 9 a.m. and 11:34 a.m. is € 1.41. Individually, injured shareholders could receive different amounts of compensation, depending on the price at which they sold their shares and on the number of shares sold. The total of the amounts paid in compensation may not exceed € 4,250,000.

2.7 The Foundation is entrusted with establishing and paying the amounts of compensation on the understanding that it will be made a proposal by Randstad for each injured shareholder pursuant to the aforementioned apportionment key. Randstad will process the requests for compensation. The Foundation will not be bound by the proposals and will be allowed to carry out the agreed scheme at its discretion, duly observing the provisions therein. To cover the costs of the Foundation's work, Randstad has made available an amount of € 212,500. On 10 March 2008, Randstad transferred that amount, plus the aforementioned

amount of € 4,250,000 to a bank account held by the Foundation.

2.8 A total of approximately 2,000 injured shareholders are eligible for compensation. A survey conducted by order of Vedior in January 2007 to establish the geographical distribution of its issued shares found that approximately 45% of the Vedior shareholders were resident or established in the Netherlands at the time and approximately 55% were resident or established in other countries. It is therefore likely that a significant portion (possibly even a majority) of those awarded a right to compensation under the agreement are resident or established outside the Netherlands. Of the total number of injured shareholders, the Petitioners know the names and addresses of 177 persons. The large majority of them have their place of residence in the Netherlands.

3. Petition

3.1 The petition is for a declaration of binding force pursuant to Article 7:907 of the Civil Code of the agreement referred to in Article 2.5, as supplemented on 2 February 2009, referred to below as the 'Agreement', to which, as stated, all of the Petitioners are party. The Agreement provides for the award of compensation from a fund to be established for that purpose to persons (both natural persons and legal entities) who sold Vedior shares on the Stock Exchange on 30 November 2007 between 9 a.m. and 11:34 a.m. at a price lower than € 15.80. The compensation is related to the damage that the aforementioned persons incurred as a result of having sold their shares at prices that did not reflect the fact that Vedior and Randstad were engaged in exploratory discussions on a possible merger between the two companies, as Vedior did not disclose that fact until its

press release on 30 November 2007 at 12.16 p.m. The Agreement is inserted by reference herein.

3.2 The declaration of binding force of the Agreement is requested in respect of the aforementioned persons further described in Article 2.1 of the Agreement, who are referred to in the Agreement and the petition as the 'Entitled Parties'. The petition is also relevant to parties that have obtained claims from those persons in respect of the damage that they incurred, all as referred to in Article 7:907(1), last sentence, of the Civil Code.

4. Appraisal

A. Admissibility

4.1 The petition of 6 October 2008, as supplemented on various points and clarified by the report of 12 May 2009, is a joint petition by the parties to the Agreement, as required under Article 7:907(1) of the Civil Code. It also satisfies the requirements of Article 1013(1) and (3) of the [Dutch] Code of Civil Procedure, subject to any variation from it allowed by the Court of Appeal. That variation concerns the requirement of Article 1013(1)(c) of the Code of Civil Procedure that the petition must state the names and places of residence of the persons for the benefit of whom the Agreement was concluded and who are known to the Petitioners. During the pre-trial review on 23 January 2009, the Court of Appeal allowed the Petitioners to include the relevant details in an addendum rather than in the Petition itself, and to supplement them later by adding the names and places of residence of persons who came to their knowledge after the petition was filed. The Petitioners made use of both opportunities. They have informed the Court of Appeal of the names and places of residence of a total of 177 persons for the benefit of whom the

agreement was concluded. The requirements of Article 1013(1)(c) of the Dutch Code of Civil Procedure has thus been materially satisfied.

4.2 With respect to the notice to stakeholders for the hearing of the petition, the Court of Appeal basically determined at the pre-trial review that notice to the persons for the benefit of whom the Agreement was concluded and who are known to the Petitioners must be given by ordinary letter to the extent that they are resident in the Netherlands. The notice to persons who reside abroad and are known to the Petitioners must be given with due observance of the provisions of the EC Service Regulation or otherwise, with due observance of the provisions of the relevant conventions to which the Netherlands is party, all to the extent applicable. The Court of Appeal further determined that the notice must be given by publishing announcements in the Dutch and foreign newspapers referred to Articles 12.17 and 12.20 of the petition and on the websites maintained by the petitioners, referred to in Article 12.17 of the petition. The foreign newspapers were selected with due regard for the geographical distribution of the shares issued by Vedior, which is apparent from the survey referred to in Article 2.8. All announcements made by the Petitioners required prior approval of the relevant texts by the Court of Appeal.

4.3 By report dated 12 May 2009, submitted prior to the hearing, the Petitioners informed the Court of Appeal of the methods they had used to give the stakeholders notice of the hearing. Basically, the Petitioners' report stated that they had given notice by registered letter to all persons known to them for the benefit of whom they had concluded the Agreement, to the extent that those persons had a place of residence in the Netherlands. Persons for the benefit of whom the agreement was concluded who resided abroad and who were known to the Petitioners

were, according to the Petitioners, given notice by registered letter with acknowledgement of receipt, on the understanding that one person residing in Monaco was given notice pursuant to the provisions of The Hague Service Convention 1965. Partly in light of the relevant places of residence outside the Netherlands, the foregoing means that all persons known to the Petitioners have been given notice with due observance of the requirements set by the Court of Appeal in that regard.

4.4 In their aforementioned report, the Petitioners also submitted photocopies of the (standard) letters that were sent to the aforementioned persons to give notice of the hearing, as well as photocopies of the announcements of the hearing that they had published in newspapers. The Petitioners also submitted the announcements that they had posted on the websites referred to in Article 12.17 of the petition. The letters and announcements correspond to the text approved by the Court of Appeal and contain all of the references required under Article 1013(5) of the Code of Civil Procedure. Because the petition comprises a joint request by the parties to the Agreement and satisfies the requirements of Article 1013(1) and (2) of the Code of Civil Procedure, subject to any variation of them allowed by the Court of Appeal, and because the stakeholders were given notice with due observance of the relevant requirements of the Court of Appeal and otherwise in accordance with the provisions of Article 1013(5) of the Code of Civil Procedure, the petition can be admitted.

B. Requirements of Article 7:907 of the Dutch Civil Code

4.5 The Agreement provides for compensation of the damage inflicted on certain former shareholders of Vedior because they sold shares on the Stock Exchange on 30 November 2007 between 9 a.m. and 11:34 a.m. at prices that did not reflect the fact that Vedior and Randstad

were engaged in exploratory discussions on the possibility of a merger at the time as a consequence of the fact that Vedior did not disclose the latter information until 12.16 p.m. that day. The parties to the agreement are an association with full legal capacity and a foundation, and the Articles of Association of each of these provide that they (co) represent the interests of the persons on whom the aforementioned damage was inflicted, i.e. the VEB and the Foundation, and a party that has committed itself to compensate the damage, i.e. Randstad.

4.6 According to Article 3(1) of its Articles of Association, VEB 'represents the interests of investors in the widest possible sense'. Those interests can be deemed to include the interests of the aforementioned former Vedior shareholders. Article 2 of the Articles of Association of the Foundation were amended (on 5 March 2009) after the petition was filed and contain an object clause (both before and after the amendment) in which representation of the interests of the former Vedior shareholders in respect of the aforementioned damage is stated in as many words. In Article 3.1 of the Agreement, Randstad has committed itself to compensate that damage up to an amount € 4,250,000.

4.7 The considerations of Articles 4.5 and 4.6 lead to the conclusion that the Agreement can be regarded as an agreement governed by Article 7:907(1) of the Civil Code, and it can be declared that it has binding force under that Article on all of the parties thereto if the other requirements for a declaration of binding force have been satisfied. The aforementioned is not affected by the condition that it is likely that a significant portion (possibly even a majority) of the parties that are awarded compensation under the Agreement are resident or established outside the Netherlands. Those persons fully

belong to the persons on whom damage was inflicted within the meaning of Article 7:907(1) of the Civil Code.

4.8 To be eligible for the declaration of binding force, the Agreement must contain the details prescribed in Article 7:907(2) of the Civil Code. The following is relevant in that respect. Article 2.1 of the Agreement contains a description of the group of persons for the benefit of whom it was concluded. Essentially, they are persons (both natural persons and legal entities) who sold shares of Vedior on the Stock Exchange between 9 a.m. and 11:34 a.m. on 30 November 2001, regardless of the time at which they gave the relevant selling instruction. Persons who sold Vedior shares at other times and persons who sold Vedior shares within that time period but not on the Stock Exchange do not belong to the group of persons for the benefit of whom the Agreement was concluded. The same applies to persons who gave instructions to sell on the Stock Exchange within the aforementioned time period, but whose instructions were not carried out until resumption of the trade in Vedior shares on 30 November 2007 at 1:20 p.m. In that case, the shares in question were not sold between 9 a.m. and 11:34 a.m. (as the purchase contract was concluded after 1:20 p.m.).

4.9 Article 4.1 and consideration (U) of the Agreement give a sufficiently accurate indication of the number of persons for the benefit of whom the agreement was concluded, i.e. approximately 2,000. Article 3.1 and consideration (L) of the Agreement state the total compensation being awarded to those persons, i.e. up to € 4,250,000. Article 3.4, supplemented by Article 3.2 contain the apportionment key for adoption of the amounts for which the individual Entitled Parties are eligible for compensation (out of that total). The conditions that must be satisfied to be eligible for compensation are sufficiently evident from those provisions and from

Article 2 of the Agreement. Article 7 describes the method by which the amount of compensation is determined and can be obtained. Article 5.5 states the name and the place of residence of the party which the Entitled Parties can inform by written statement of their wish not to be bound by the Agreement in the event that it is declared to have binding force, i.e. civil-law notary W.H. Bossenbroek of Amsterdam.

4.10 The considerations set forth in Articles 4.8 and 4.9 lead to the conclusion that the Agreement contains all the details required under Article 7:907(2) of the Civil Code and therefore satisfies the provisions of that paragraph. The grounds for denial of the petition referred to in Article 7:907(3)(a) of the Civil Code are therefore of no relevance. With regard to the other grounds for denial referred to in Article 7:907(3) of the Civil Code, the following should be considered.

4.11 As stated, compensation of up to € 4,250,000 can be awarded under the Agreement. That amount will be divided among the persons for the benefit of whom the Agreement was concluded. This amount has been determined so that the persons who sold Vedior shares on the Stock Exchange between 9 a.m. and 11:34 a.m. on 30 November 2007 can be made a payment for each sold share of 80% of the difference between € 15.80 (the re-opening price at 1:20 p.m.) and the price at which they effectively sold their shares. As stated in Article 2.6, the average compensation per Vedior share sold is € 1.41. In order to calculate the amount of compensation per sold share, the price at which the share was sold is deducted from € 15.80 and the outcome is subsequently multiplied by 0.8. In order to calculate the compensation per Entitled Party, the amount calculated above is subsequently multiplied by the number of shares that the person in question sold at the price at which they were sold. Because the price at which the shares were effectively

sold is taken as a basis and that price did not stay the same in the time period between 9 a.m. and 11:34 a.m. (due to the occurrence of price fluctuations), the amount of compensation awarded to the (former) shareholders of Vedior may differ between shareholders, depending on the prices at which they sold their shares (and the number of shares sold). For the same reason, a (former) shareholder who sold Vedior shares at different times in the time period between 9 a.m. and 11:34 a.m. may be awarded a different compensation per sold share on the understanding that the compensation for shares that were sold at the same price will always be the same.

4.12 As stated in Article 2.2, Vedior issued a press release at 12.16 p.m. on 30 November 2007 announcing that it and Randstad were engaged in exploratory discussions on a merger between the two companies, possibly by means of a public bid to be issued by Randstad on the shares of Vedior. It is therefore fair to assume that that information was reflected on the re-opening price of € 15,80 on resumption of the trade in Vedior shares on the Stock Exchange at 1.20 p.m. Assuming that that price reflected the fact that Randstad and Vedior were engaged in exploratory discussions, it is also fair to assume that the price of € 15.80 in the Agreement was used as a reference point to calculate the damage incurred by the persons who sold Vedior shares on 30 November 2007 between 9.00 a.m. and 11.34 a.m. due to the fact that Vedior did not disclose that discussions were conducted with Randstad until 12:16 p.m. It is indeed likely that the prices at which the (former) shareholders of Vedior sold the Vedior shares in that time period did not yet reflect that information, and it is also likely that the disclosure of the discussions pushed up the price of the Vedior shares to € 15.80. The persons who sold Vedior shares between 9.00 a.m. and 11.34 a.m. can therefore be deemed to have incurred damage to the extent that the price at which they sold their shares was lower than the

re-opening price of € 15.80. The agreement provides that 80% of that damage can be compensated in the manner described above.

4.13 To be eligible for compensation, (former) shareholders of Vedior who are entitled to compensation pursuant to the Agreement need to submit a written request to Randstad by means of a completed form that Randstad and VEB will make available for that purpose. The form must be accompanied by photocopies of bank statements, bank declarations or other proof from which the number of shares sold by the applicant and the time at which each share was sold are apparent. As stated in Article 2.7, Randstad will subsequently make a proposal to the Foundation for the amount of compensation to be awarded to the (former) shareholder in question. The Foundation will adopt the amount of compensation at its discretion, taking into account the provisions of the Agreement on the amount of compensation. According to Article 7.3(f) in conjunction with Article 7.7 of the Agreement, the Foundation will pay the compensation for which (former) shareholders of Vedior are eligible, assuming that they have filed a request for compensation with Randstad, within three weeks of the date on which three months have expired since the end of the term (set by the Court of Appeal) within which Entitled Parties to compensation may advise that they do not wish to be bound by the Agreement.

4.14 Pursuant to Article 17.3(f), an application for compensation under the Agreement must have been received by Randstad within three months of the end of the term within which Entitled Parties may advise that they do not wish to be bound by the Agreement. Applications that are received later may nonetheless result in an award of compensation, if the applicant belongs to the persons for the benefit of whom the Agreement was concluded and is eligible for compensation under its provisions. After all, Article 5.8 provides that the right to compensation

under this Agreement expires only if an Entitled Party has not claimed compensation within a term of one year of the commencement of the day following that on which he became aware of his eligibility to compensation. That provision seems to be inspired by and corresponds to the provisions of Article 7:907(6) of the Civil Code and the Court of Appeal understands from it that the right to compensation expires if is not claimed within the terms set forth in Article 5.8. The mere receipt by Randstad of a request for compensation more than three months after the term within which Entitled Parties may advise that they do not wish to be bound by the Agreement will therefore not lead to expiration of the right to compensation under the Agreement.

4.15 The considerations set forth in Articles 4.11 to 4.14 lead to the conclusion that it cannot be said that the amount of compensation awarded under the Agreement is unreasonable; therefore the ground for rejection of the petition referred to in Article 7:907(3)(b) of the Dutch Civil Code is of no relevance. Neither in view of the scope of the damage incurred by the (former) shareholders of Vedior as a result having sold Vedior shares at a price lower than € 15.80 on 30 November 2007 between 9.00 a.m. and 11.34 a.m., nor in view of the apportionment key for division of the total compensation of up to € 4,250,000 among those persons, or the way in which the compensation can be obtained can it be stated that the amount thereof is unreasonable. The aforementioned (former) shareholders are eligible for 80% of the damage that they incurred as a result of having sold their shares at prices that did not reflect the fact that Vedior and Randstad were engaged in exploratory discussions on a possible merger between the two companies at the time. In the best case, it is uncertain whether they would be awarded higher compensation in a lawsuit (whether or not on the basis of Article 3:305(a) of the Civil Code). In addition, the agreed apportionment

key reflects the degree to which the individual (former) shareholders of Vedior, who sold shares in the time period concerned incurred damage, so that the compensation to which they are eligible under the Agreement will be proportional to that damage. It follows from the considerations in Articles 4.13 and 4.14 concerning the manner in which the compensation will be made available, that it can be obtained simply and quickly.

4.16 The foregoing does not affect Article 5.8 of the Agreement, which provides that the right to compensation expires if the Entitled Party fails to claim it within the term referred to in that Article of one year after which the party became aware of the compensation available for payment. This clause serves the joint interest that the persons for the benefit of whom the Agreement was concluded have in a quick and full performance of the Agreement. Moreover, the expiration clause contained in Article 5.8 is expressly permitted under Article 7:907(6) of the Civil Code. With regard to the opinion that it cannot be said that the amount of compensation awarded under the Agreement is unreasonable, it is further relevant, in view of the provisions of Article 5:59(3) of the Wft which allows a delay in the disclosure of certain information by a securities institution in the cases set forth in that paragraph, that it cannot be considered established without further examination that Vedior breached a rule of law, because it did not disclose the fact that it was engaged in exploratory discussions on a merger with Randstad until 30 November 2007 at 12.16 p.m. Likewise, it cannot be assumed without further examination that Vedior has a legal obligation to compensate the damage in respect of which the Agreement awards compensation to the persons for the benefit of whom it was concluded. It is therefore reasonable not to hold Vedior's legal successor Randstad liable for the full amount of the damage incurred by the

persons who sold Vedior shares on 30 November 2007 between 9.00 a.m. and 11.34 a.m., but only for the portion contemplated in the Agreement. It is also relevant that no defence whatsoever was put forward against the petition for the declaration of binding force of the Agreement. It can be inferred from this that the stakeholders apparently believe that the compensation awarded under the Agreement is reasonable. Finally, it is of significance that it cannot be said that the amount of compensation awarded is unreasonable, taking into consideration the costs, the time and the uncertainty that would be involved for the injured shareholders in conducting one or more lawsuits to seek compensation, and the interest that they have in preventing them.

- 4.17 None of the grounds for denial of the petition that are referred to in Article 7:907(3)(c) to (h) of the Civil Code are involved in this case. In this regard, the following is relevant. As stated in Article 2.7, Randstad transferred the amount from which the compensation would be paid to the injured (former) shareholders of Vedior and the agreed amount to cover the costs for the work of the Foundation, totalling € 4,462,500, to a bank account held by the Foundation on 10 March 2008. The amount is therefore available to the Foundation. The Foundation, an independent legal entity with its own board of management, will be able and allowed to pay amounts of compensation to the Entitled Parties from the amount of € 4,250,000 that was transferred to it. Given the above, sufficient security (within the meaning of Article 7:907(3)(c) of the Civil Code) has been provided for the payment of the compensation to the persons for the benefit of whom the Agreement was concluded. The Agreement provides for an independent determination of the amounts of compensation (within the meaning of Article 7:907(3)(d) of the Civil Code) by the Foundation, which will be obliged to apply the apportionment key referred to in Article 4.11, detailed in Article 3 (in

particular Article 3.4) of the Agreement. Although requests for compensation must be submitted to Randstad, and Randstad will then submit a proposal to the Foundation for the amount of compensation (described in Article 4.13) to be awarded to each Entitled Party, Article 7.6 of the Agreement expressly provides that the Foundation is not bound by that proposal and will determine the amount of compensation at its discretion in the manner provided in the Agreement.

4.18 The interests of the persons for the benefit of whom the Agreement was concluded are otherwise sufficiently safeguarded (within the meaning of Article 7:907(3)(e) of the Civil Code), because Article 6.2 of the Agreement provides that up to € 212,500 of the Foundation's costs are carried by Randstad (and will therefore not be deducted from the compensation available to the injured shareholders), and because Article 11.1 of the Agreement provides that Randstad will also carry the costs of drafting and performing the Agreement and the costs of drafting the petition, and because Article 9 of the Agreement provides that any dispute in relation to the performance of the Agreement will be resolved by an independent board, with the help of a set of rules drawn up for that purpose. It makes no difference for the opinion that the interests of those for the benefit of whom the Agreement was concluded are sufficiently safeguarded that Article 8.1 of the Agreement requires those persons to grant Randstad and its group companies (within the meaning of Article 2:24(b) of the Civil Code) discharge in respect of any possible claims to any compensation beyond that available under the Agreement. Not only is such a discharge an obvious part of an amicable settlement under which compensation is agreed, Article 7:908(2) and (3) of the Civil Code gives Entitled Parties to compensation the opportunity to release themselves of the discharge (and the other provisions of the Agreement) if they wish, by issuing a written

statement that they do not wish to be bound by the Agreement.

4.19 It should, however, be noted that Article 5.5 of the Agreement seems to attach conditions to statements of Entitled Parties (to the civil-law notary referred to in Article 4.9) that they do not wish to be bound by the Agreement in the event that it is declared to have binding force, whereas Article 7:908 (2) and (3) of the Dutch Civil Code governing the possibility of such statements under rules of mandatory law does not set such conditions, and they are inconsistent with the legal principle that no requirements may be imposed in respect of those statements other than the requirements that (i) they must state that a party does not wish to be bound and (ii) are made in writing. By contrast, Article 5.5 provides that statements of Entitled Parties to compensation that they do not wish to be bound by the Agreement must (additionally) state the number of Vedior shares sold by the Entitled Party in question and the time of sale of each share and must be accompanied by copies of bank statements, bank declarations or other proof from which all of this is apparent. The Court of Appeal understands from the clarification given by the Petitioners at the hearing that the Petitioners will not impose the foregoing as a condition or conditions for a statement of the validity thereof whereby an Entitled Party to compensation advises that it does not wish to be bound by the Agreement, and that a simple written statement to the effect (only) that an Entitled Party does not wish to be bound will suffice to achieve the latter purpose. Article 5.5 should therefore be interpreted and applied in that way, which means that Entitled Parties to compensation cannot be confronted with an obligation to provide the details specified therein if they do not wish to be bound by the Agreement. That way, the interests of the persons for the benefit of whom the Agreement was concluded will not be affected in

so far as they are safeguarded by Article 7:908(2) and (3) of the Civil Code.

4.20 It cannot be said that the Foundation and VEB are not sufficiently representative (within the meaning of Article 7:907(3)(f) of the Civil Code) of the interests of the persons for the benefit of whom the Agreement was concluded. What matters is whether the Foundation and VEB are jointly sufficiently representative of the interests of the persons for the benefit of whom the Agreement was concluded. The law does not require that from each of them individually in respect of all of those persons, as long as each of them is sufficiently representative for a sufficiently large portion of those persons. The answer to the question of whether this condition is being met should take into consideration the fact that it is likely that a significant portion (possibly even a majority) of the persons awarded compensation under the Agreement reside or are established outside the Netherlands (as follows from the survey referred to in Article 2.8 into the geographical distribution of the shares issued by Vedior).

4.21 Given the objects stated in VEB's Articles of Association and the activities that it effectively pursues to represent the interests of shareholders resident or established in the Netherlands, it can by all means be regarded as sufficiently representative of the interests of the persons for the benefit of whom the Agreement was concluded and who are resident or established in the Netherlands. The Foundation, given the objects stated in its Articles of Association and its actual activities, is that in respect of those persons as well as the former Vedior shareholders residing or established abroad who sold their Vedior shares on the Stock Exchange on 30 November 2007 between 9 a.m. and 11:34 a.m. Since the amendment to the Articles of Association of the Foundation referred to in Article 4.6, they allow for the

possibility that, among others, any party representing the interests of investors joins the Foundation as a 'member'. It is apparent from the records that the Petitioners sent to the Court of Appeal on 12 and 15 May 2009 that this opportunity has been seized by associations of investors established in Germany, Italy, Belgium (Flanders) and the United Kingdom. In addition, a European umbrella association of shareholder organisations has joined the Foundation as a 'member', and the Petitioners informed the Court of Appeal at the hearing of the petition that the Agreement is also supported by an association of shareholders established in France. Given this evident support for the Foundation by foreign-based parties representing investor interests and the distribution of the shares issued by Vedior appearing from the survey referred to in Article 2.8 (according to which survey approximately 30% of the Vedior shareholders were resident or established in one of the aforementioned countries and approximately 45% in the Netherlands in January 2007), the Foundation can also be deemed to be sufficiently representative of the interests of persons for the benefit of whom the Agreement was concluded who are resident or established outside the Netherlands. The condition that no defence has been put forward against the petition for a declaration of binding force, even though the petition and the hearing were announced in the newspapers and on the websites referred to in Article 4.2, respectively, is an (added) indication that the Foundation and VEB can effectively count on wide support among other former Vedior shareholders for the benefit of whom the Agreement was concluded and who are resident or established both within and outside the Netherlands.

4.22 With a number of persons of approximately 2,000 for the benefit of whom the Agreement was concluded, there is no reason to conclude that the group is of insufficient size (within the meaning of Article 7:907(3)(g) of the Civil

Code) to justify a declaration of binding force. The Foundation, i.e. the legal entity that will make the compensation available pursuant to the Agreement, is a party to the Agreement, therefore the ground for denial identified in Article 7:907(3)(h) of the Dutch Civil Code is of no relevance.

4.23 All of the foregoing leads to the conclusion that the petition can be granted. The Agreement (as supplemented on 2 February 2009) will therefore be declared to have binding force on the persons referred to in Article 2.1 therein and the successors in title referred to in Article 7:907(1), last sentence, of the Dutch Civil Code.

C. Other issues

4.24 It will be determined on the basis of Article 1017(3) of the Code of Civil Procedure that the Petitioners must inform Entitled Parties to compensation known to them of the facts referred to in Article 4.2 and in the manner referred to in that paragraph as soon as is practicable after this ruling has become final. The Petitioners must also publish them by announcements in the Dutch and foreign newspapers referred to in Articles 12.17 and 12.20 of the petition and on the Petitioners' websites referred to in Article 12.17 of the petition. The Petitioners may do so using a text that is materially the same as the draft text that they submitted as Schedule 5 to their report of 12 May 2009, on the understanding that (i) the letter to the known Entitled Parties to compensation and the aforementioned announcements must expressly state the term referred to in Article 4.25 below, (ii) express reference must be made to the one-year expiry term referred to in Article 5.8 of the Agreement, discussed in Article 4.16, within which compensation must be claimed on pain of expiry and (iii) the reference to the possibility of being released from being bound by the Agreement by written statement must be

amended so that it is consistent with the considerations set forth in respect of that statement in Article 4.19. The submitted draft text must therefore be amended on those points. With respect to the newspapers referred to in Article 4.20 of the petition, it will suffice for the Petitioners to post a brief announcement referring to the Petitioners' websites on which the full text can be read. In addition, the Court of Appeal notes that it follows from Article 1017(3), first sentence, of the Code of Civil Procedure that a copy of this ruling must be issued to all known Entitled Parties to compensation as soon as is practicable after the ruling has become final. The Petitioners must therefore send a copy of this ruling (without the schedules hereunto attached) as an enclosure to the letter to be sent by them to the known Entitled Parties. Since only 177 persons are involved, the Court of Appeal sees no reason to deviate from the provisions of the law.

4.25 Since the petition will be granted, the Court of Appeal understands from the Petitioners' statement in Article 12.25 of the petition and the provisions of Article 5.3 of the Agreement that the Petitioners will acquiesce in this ruling so that, as a result of that acquiescence, the ruling will become final shortly after it is handed down (also taking into consideration that no parties besides the Petitioners have recourse to cassation appeal pursuant to Article 1018(1) of the Code of Civil Procedure). The Court of Appeal therefore trusts that the Petitioners can and will publish the aforementioned notices and announcements before 1 September 2009. On that assumption, the term within which Entitled Parties to compensation can give written notice (to the civil-law notary referred to in Article 4.9) that they do not wish to be bound by the Agreement can be set at three months, commencing on 1 September 2009 and terminating on 30 November 2009, so that the term will expire on 1 December 2009. There is no reason for a term longer than

three months. If, contrary to the assumption above, the aforementioned notices and announcements are not made before 1 September 2009, that term will commence on the first day of the month following the month in which they are made and will end on the last day of the third month after the commencement date of the term.

5. Decision

The Court of Appeal:

understands that Article 5.5 of the Agreement should be read as considered in Article 4.19;

declares that the Agreement (as supplemented on 2 February 2009) has binding force on the persons referred to in Article 2.1 thereof and the successors in title referred to in Article 7:907(1), last sentence, of the Civil Code;

determines that the Petitioners must publish the notices and announcements referred to in Article 4.24 in the manner described therein as soon as is practicable after this ruling has become final;

determines that the term referred to in Article 7:908(2) of the Civil Code will be three months as detailed in Article 4.25;

determines that the Agreement that is declared to have binding force and the draft text attached by the Petitioners as Schedule 5 to the report of 12 May 2009 must be attached to this ruling; and

determines that this ruling will be issued to the Petitioners on paper as well as in digital form.

This ruling was handed down by A.H.A. Scholten, W.H.F.M. Cortenraad and M.P. van Achterberg, and pronounced in public on Wednesday 15 July 2009.

Registrar

Chair